

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

TIMOTHY ARTHUR BERRY,

Plaintiff,

v.

JON A. VAN ALLSBURG,

Defendant.

Case No. 15-cv-14380

Honorable Thomas L. Ludington
Magistrate Judge Patricia T. Morris

**ORDER ADOPTING REPORT AND RECOMMENDATION AND DISMISSING
PLAINTIFF'S COMPLAINT**

On December 17, 2015 Plaintiff Timothy Arthur Berry filed a complaint against Judge Jon A. Van Allsburg. In the complaint Berry claims that Judge Van Allsburg violated a number of his constitutional rights through an October 25, 2015 “ex parte order” and during a November 23, 2015 child custody hearing over which Judge Van Allsburg presided. Berry applied for permission to proceed *in forma pauperis*, which was granted. ECF No.6. The case was referred to Magistrate Judge Patricia T. Morris for general case management. ECF No. 4.

On January 5, 2016, Judge Morris issued a report recommending Berry’s complaint be dismissed for failing to state a claim on which relief may be granted. *See* Rep. & Rec. 3-4, ECF No. 7. Judge Morris found that during the events alleged, Judge Van Allsburg was acting in his official capacity as a judicial officer. Thus, Judge Morris concluded, Judge Van Allsburg maintains immunity from suit. She further concluded that Berry did not allege facts consistent with the two exceptions to judicial immunity.

Although the Magistrate Judge’s report explicitly stated that the parties to this action may object to and seek review of the recommendation within fourteen days of service of the report,

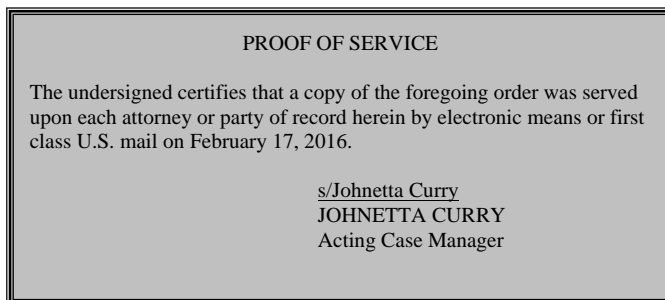
neither Plaintiff nor Defendant filed any objections. The election not to file objections to the Magistrate Judge's report releases the Court from its duty to independently review the record. *Thomas v. Arn*, 474 U.S. 140, 149 (1985). The failure to file objections to the report and recommendation waives any further right to appeal.¹

Accordingly, it is **ORDERED** that the magistrate judge's report and recommendation, ECF No. 7, is **ADOPTED**.

It is further **ORDERED** that Plaintiff Timothy Berry's Complaint, ECF No. 1, is **DISMISSED with prejudice**.

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

Dated: February 17, 2016



¹ Berry filed a notice of appeal after Judge Morris issued her Report. Normally, the filing of a notice of appeal divests this Court of jurisdiction. Berry's appeal is improper, however, since it was not taken from a final decision of this Court. 28 U.S.C. § 1291. Berry also has not submitted a proper request under 28 U.S.C. § 1292 for taking an interlocutory appeal. Even if Berry's notice of appeal were to be construed as a request to authorize an interlocutory appeal under § 1292(b) following Judge Morris's Report, that request would be denied.